

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

LAWRENCE "LARRY" LEE
RAMIREZ

PLAINTIFF

v.

Civil No. 08-05038

SHERIFF FERGUSON,
CAPTAIN PETRAY,
DEPUTY POP, AND
DOCTOR HUSKINS

DEFENDANTS

O R D E R

NOW on this 28th day of September 2009, comes on for consideration the **Report and Recommendation of the Magistrate Judge** (document #24) and Plaintiff's response thereto (document #25). The Court has reviewed this case *de novo* and, being well and sufficiently advised, finds and orders as follows:

1. The Report and Recommendation is sound and should be adopted, with the following modification.

Regarding Plaintiff's claim of inadequate medical care against Defendants in their individual capacity, the Report and Recommendation analyses said claim in two parts: (1) the medical care received by Plaintiff during his initial incarceration in the Benton County Detention Center from July 7, 2007 until his release on bond, August 3, 2007; and (2) the medical care received by Plaintiff after his return to the Benton County Detention Center on November 6, 2007. The Report and Recommendation recommends granting Defendants' Motion for Summary Judgment as to the medical care received by Plaintiff during his first incarceration and denying the motion as the medical

care received by Plaintiff during his second incarceration.

However, in view of the objections submitted by Plaintiff and the allegations set forth therein, the Court finds that the period of Plaintiff's first incarceration should also be further examined, to determine whether Defendants acted with deliberate indifference in failing to attend to Plaintiff's mental health needs.

The Court, therefore, finds that Defendants' Motion for Summary Judgment (document #17) should be denied as to Plaintiff's entire claim for denial of medical care against Defendants in their individual capacity.

2. Regarding Plaintiff's remaining claims, the Court hereby adopts the Magistrate Judge's Report and Recommendation. Specifically, the Court finds that:

* As to Plaintiff's official capacity claim regarding the Benton County Detention Center's policies and customs pertaining to psychiatric care, staffing, following medical orders, and screening for mental health problems, the Court finds that Defendants' Motion for Summary Judgment should be denied.

* Regarding Plaintiff's unanswered grievances claim, access to the courts claim, freedom of religion claim, and excessive force claim the Court finds that Defendants' Motion for Summary Judgment should be granted. While there appears to be a genuine issue of fact regarding an altercation between Officers Tomlin, Vanatta, and Torres, and the force used therein, these individuals are not named in the instant lawsuit. However, the Court notes that, in

Plaintiff's objections to the Report and Recommendation, he requests amendment of his complaint to add Officers Tomlin, Vanatta, and Torres as defendants to this action. The Court finds that the issue of amendment should be addressed by the Magistrate Judge when further considering the remaining claims of Plaintiff.

IT IS THEREFORE ORDERED that, for the reasons set forth herein, the **Report and Recommendation of the Magistrate Judge** (document #24) is **adopted with the herein stated modification**. Accordingly, Defendants' **Motion for Summary Judgment** (document #17) is hereby **granted in part and denied in part**. The motion is **granted** as to Plaintiff's claims of unanswered grievances, access to the courts, freedom of religion, and excessive force. The motion is **denied** as to Plaintiff's claim for the denial of medical care and his claim against Defendants in their official capacity regarding procedures and policies in place at the Benton County Detention Center for mental health care.

IT IS FURTHER ORDERED that this matter is referred back to the Magistrate Judge for disposition of Plaintiff's remaining claims consistent with this Order.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE